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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/503,140	02/11/2000	Tsuneco Hayashi	SONY-T0130	6142
33448	7590	06/20/2006	EXAMINER TORRES, JOSEPH D	
ROBERT J. DEPKE LEWIS T. STEADMAN ROCKEY, DEPKE, LYONS AND KITZINGER, LLC SUITE 5450 SEARS TOWER CHICAGO, IL 60606-6306			ART UNIT 2133	
DATE MAILED: 06/20/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/503,140

Applicant(s)

HAYASHI ET AL.

Examiner

Joseph D. Torres

Art Unit

2133

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-7,19,20 and 28-35 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3,5-7,19,20 and 28-35 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 20 May 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892).
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 04/29/2006 have been fully considered but they are not persuasive.

The Applicant contends, "In response to the Examiner's final office action Applicants have modified the independent claims to clarify the invention and distinguish the claimed invention from the prior art of record. More specifically, Applicants have modified the independent claims to further include the requirement that the control operation perform adjusting of a parameter signal determined by calculation of an amount of error rate variation, the parameter signal adjustment being based upon a difference from an optimal value and error rate calculations periodically made above and below the optimum value".

The Examiner disagrees and asserts that claims 1, 19, 20 and 34 explicitly recite, "wherein the control means performs a control operation so as to determine a parameter that makes an error rate smaller before or during playback of the recording medium, **Or** if a condition of playback deteriorates, the control operation adjusting a parameter signal determined by calculation of an amount of error rate variation the parameter signal adjustment being based upon a difference from an optimal value and error rate calculations periodically made above and below the optimum value"

[Emphasis Added]. The term or is a function word used to indicate an alternative,

hence; everything after the “or” term is optional as long as long as all of the elements of the limitations prior to the “or” term hold. That is, the Applicant has not added a single limitation to the claim that was not in the claim before the amendment and has only provided an optional alternative limitation to the limitations that are already in the claim.

In addition even if the Applicant were to amend claims 1, 19, 20 and 34 to replace the “or” term with “and”, newly amended claim 1 still recites, “error rate calculations periodically made above and below the optimum value”, which is incomprehensible. The Examiner is assuming that the Applicant intends something to the effect of: --error rate calculations periodically made and checked against the optimum value--. However, the Examiners position is mute since the entire limitation after the “or” term is optional.

The Examiner disagrees with the applicant and maintains all previous rejections of claims 1-3, 5-7, 19, 20 and 28-35. All amendments and arguments by the applicant have been considered. It is the Examiner’s conclusion that claims 1-3, 5-7, 19, 20 and 28-35 are not patentably distinct or non-obvious over the prior art of record in view of the references, Hayashi, Yasuhiro et al. (US 5784356 A, hereafter referred to as Hayashi), Bullock; Dean C. et al. (US 5764651 A, hereafter referred to as Bullock) and Takamine, Kouichi et al. (US 6240055 B1, hereafter referred to as Takamine) in view of in view of Lee, Woo-Nyun et al. (US 5930448 A, hereafter referred to as Lee) as applied in the last office action, filed 05/26/2005. Therefore, the rejection is maintained.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 1, 19, 20 and 28-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi, Yasuhiro et al. (US 5784356 A, hereafter referred to as Hayashi) in view of Bullock; Dean C. et al. (US 5764651 A, hereafter referred to as Bullock).

35 U.S.C. 103(a) rejection of claims 1, 19, 20 and 28-33.

See the Non-Final Action filed 05/26/2005 for detailed action of prior rejections.

35 U.S.C. 103(a) rejection of claims 34 and 35.

Claim 34 has all the limitation of claim 1 and claim 25 contains limitations of previously examined claim 1.

See the Non-Final Action filed 05/26/2005 for detailed action of prior rejections.

2. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi, Yasuhiro et al. (US 5784356 A, hereafter referred to as Hayashi) and Bullock; Dean C. et al. (US 5764651 A, hereafter referred to as Bullock) in view of Takamine, Kouichi et al. (US 6240055 B1, hereafter referred to as Takamine).

See the Non-Final Action filed 05/26/2005 for detailed action of prior rejections.

3. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi, Yasuhiro et al. (US 5784356 A, hereafter referred to as Hayashi), Bullock; Dean C. et al. (US 5764651 A, hereafter referred to as Bullock) and Takamine, Kouichi et al. (US 6240055 B1, hereafter referred to as Takamine) in view of in view of Lee, Woo-Nyun et al. (US 5930448 A, hereafter referred to as Lee).

See the Non-Final Action filed 05/26/2005 for detailed action of prior rejections.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure many of which can be used in a prior art rejection of the current claims. In particular, Christensen teaches an error correcting means for correcting errors in said read data (col. 7, lines 55-64 in Christensen); an error rate calculating means for calculating an error rate of said errors in said read data (col. 8, lines 11-14 in Christensen); and a control means for dynamically controlling and adjusting reading

conditions (Microprocessor 25 in Fig. 3 of Christensen); wherein the control means performs a control operation so as to determine a parameter that makes an error rate smaller before or during playback of the recording medium, or if a condition of playback deteriorates, the control operation adjusting a parameter signal determined by calculation of an amount of error rate variation the parameter signal adjustment being based upon a difference from an optimal value and error rate calculations periodically made and checked against the optimum value (Abstract in Christensen).

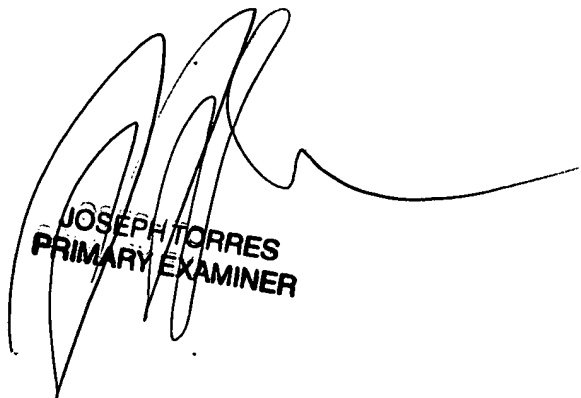
This is a RCE of applicant's earlier Application. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Torres whose telephone number is (571) 272-3829. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on (571) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JOSEPH TORRES
PRIMARY EXAMINER

Joseph D. Torres, PhD
Primary Examiner
Art Unit 2133